

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GLORIA FALLA
and ROGER WARREN



Application No. 10/611,682

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on August 3, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

January 31, 2006, appellants filed an Appeal Brief. A review of the file reveals that the Summary of Claimed Subject Matter does not map the claimed invention to the independent claims as set forth in 37 CFR § 41.37(c)(1)(v) which states:

(v) ***Summary of claimed subject matter.*** A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent

claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

On April 26, 2006, an Examiner's Answer was entered into the record. In the Evidence Relied Upon section, page No. 3, paragraph 8, the examiner has stated that "No evidence is relied upon by the examiner in the rejection of the claims under appeal." A review of the file reveals that references to Gluckin (Patent No. 5,154,659), Bracht (Patent No. 2,915,067), and Butt (5,820,433) were applied to the statement of rejections in the Grounds of Rejection, paragraph (9) of the examiner's answer. Before further review, the examiner must submit a corrected examiner's answer that will include in the Evidence Relied Upon section, the list of references mentioned in the statement of rejections. See the Manual of Patent Examining Procedure, (MPEP) 1207.02. Appropriate correction is required.

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) hold the Appeal Brief of January 31, 2006 defective;

- 2) request applicants to file a substitute Appeal Brief in compliance with 37 CFR § 41.37;
- 3) for the examiner to consider the substitute Appeal Brief, and if necessary, vacate the Examiner's Answer mailed April 26, 2006, and issue a revised Examiner's Answer in accordance with the new rules effective September 13, 2004;
- 4) have a complete copy of the substitute Appeal Brief and any subsequent Examiner's Answer scanned into the record; and
- 5) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By:



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